IN THE HIGH COURT OF JUDICATURE AT BOMBAY

O.O.C.J.

NOTICE OF MOTION NO.557 OF 2006

IN

APPEAL (L) NO.1199 OF 2005

AND

APPEAL (L) NO.1199 OF 2005

...

Mr.Shyam Chhabria ...Appellant

v/s.

Bank of Maharashtra ...Respondent

...

Mr.Ashwin Shende i/b Khaitan & Jaykar for the Appellant.

None for the Respondent.

...

CORAM: D.K.DESHMUKH &

J.H.BHATIA, JJ.

DATED: 19TH JULY, 2007

P.C.:

1. This Notice of Motion is taken out by the original Defendant for condonation of delay in filing the Appeal.

2. Assuming that there is satisfactory explanation for the delay, it appears that the order that is being challenged by the Defendant is an order by which the court granted Summons for Judgment taken out by the Plaintiff and the decreed the suit. Admitted position is that after being served with the Summons for Judgment, the Defendant did not file any affidavit in reply and did not apply for leave to defend. In view of the provisions of Order XVII of C.P.C, in the absence of any application for leave to defend, in our opinion, the learned single Judge was justified in granting the Summons for Judgment. No explanation is given why application for leave to defend was not made within the period allowed by Order XVII of C.P.C. Both Notice of Motion and the Appeal are, therefore, disposed of.

(D.K.DESHMUKH, J.)

(J.H.BHATIA, J.)